

A. P., surviving spouse of C. P. (deceased), asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's dismissal of her claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

ISSUES PRESENTED

In her motion for review, Mrs. P. suggests that medical issues should have been submitted to a Medical Panel. However, before considering the issues raised in Mrs. P.'s motion for review, the Labor Commission must first determine whether the motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

FINDINGS OF FACT

The ALJ issued her decision in this matter on October 20, 2003. That same day, a copy of the ALJ's decision was mailed to Mrs. P. and her attorney, David Parker, at their correct mailing addresses. On November 21, 2003, the Labor Commission received Mrs. P.'s motion for review, which was faxed at 4:44 pm.

DISCUSSION AND CONCLUSIONS OF LAW

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. A motion for review is not "filed" until it is actually received by the Labor Commission.

In this case, the ALJ's decision was issued on October 20, 2003, but Mrs. P.'s motion for review was not received until 32 days later, on November 21, 2003. Consequently, Mrs. P. failed to file her motion for review within the 30 day period allowed by law.

ORDER

The Labor Commission dismisses Mrs. P.'s motion for review as untimely. The prior decision of the ALJ remains in effect. It is so ordered.

Dated this 27th day of February, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch

